

**NEW MEXICO DEPARTMENT
OF TRANSPORTATION**

REQUEST FOR PROPOSALS



NM DOT

DISTRIC TWO

RFP No. 19-24

MESA REST AREA - ARCHITECTURAL/ENGINEERING SERVICES

AUGUST 2018

TABLE OF CONTENTS

I.	ADVERTISEMENT	
II.	INTRODUCTION	
	A. Purpose of this Request for Proposals	4
	B. Scope of Work	4
	C. Scope of Procurement	4
	D. Procurement Manager	4
	E. Definition of Terminology.....	5-7
III.	CONDITIONS GOVERNING THE PROCUREMENT	
	A. Sequence of Events	8
	B. Explanation of Events	9
	1. Issue of RFP	9
	2. Pre-Proposal Conference.....	9
	3. Distribution List Response Due.....	9
	4. Deadline to Submit Additional Written Questions	9
	5. Response to Written Questions/RFP Amendments	9
	6. Submission of Proposal	10
	7. Proposal Evaluation	10
	8. Selection of Finalists	10
	9. Oral Presentations by Finalists.....	10
	10. Best and Final Offers from Finalists.....	11
	11. Finalize Contract.....	11
	12. Contract Award	11
	13. Right to Protest	11
	C. General Requirements	12
	1. Acceptance of Conditions Governing the Procurement	12
	2. Incurring Cost	12
	3. Prime Contractor Responsibility	12
	4. Subcontractors/Consent	12
	5. Certifications and Licenses	12
	6. Amended Proposals	13
	7. Offerors' Rights To Withdraw Proposal	13
	8. Proposal Offer Firm	14
	9. Disclosure of Proposal Contents	14
	10. No Obligation	14
	11. Termination	14
	12. Sufficient Appropriation	14
	13. Legal Review	15
	14. Governing Law	15
	15. Prohibited Bidding	15
	16. Consent to Jurisdiction and Venue	15
	17. Basis for Proposal	15
	18. Contract Terms and Conditions	15
	19. Offeror's Terms and Conditions	16
	20. Contract Deviations	16

21. Contract Negotiations	17
22. Offeror Qualifications	17
23. Right to Waive Minor Irregularities.....	17
24. Change in Contractor Representatives	17
25. Notice of Penalties.....	17
26. Agency Rights.....	17
27. Right to Publish.....	17
28. Ownership of Proposals.....	18
29. Confidentiality.....	18
30. Electronic Mail Address Required.....	18
31. Use of Electronic Versions of this RFP.....	18
32. New Mexico Employees Health Coverage.....	18
33. Disclosure of Campaign Contributions.....	19
34. Pay Equity Reporting Requirements.....	19
35. Disclosure Regarding Responsibility.....	20
36. New Mexico Preferences.....	21
37. Conflict of Interest; Governmental Conduct Act.....	22

IV. RESPONSE FORMAT AND ORGANIZATION

A. Number of Responses	23
B. Number of Copies	23
C. Proposal Format	23
1. Proposal Organization	23
2. Letter of Transmittal	24

V. SPECIFICATIONS

A. Mandatory Specifications and Forms.....	25-27
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VI. EVALUATION

A. Evaluation Factors/Points	28
B. Evaluation Process	28

APPENDICES

- A. Project Listing Form
- B. Sample Contract Terms and Conditions
- C. Acknowledgement of Receipt Form
- D. Campaign Contribution Disclosure Form
- E. New Mexico Employees Health Coverage Form

I. ADVERTISEMENT

New Mexico Department of Transportation
District 2

RFP No. 19-24
Mesa Rest Area – Architectural/Engineering Services

The New Mexico Department of Transportation (NMDOT) is requesting proposals from qualified firms or Offerors for the purpose of hiring a contractor who will aggressively pursue a schedule to plan, design, and furnish plans for a new tandem rest area (2 buildings) to be constructed at the current site of the Mesa Rest Area, 36 miles North of Roswell, NM. Proposals shall be valid for one hundred twenty (120) days subject to all action by the New Mexico Department of Transportation. NMDOT reserves the right to reject any or all proposals in part or in whole. Proposals shall be submitted in a sealed container or envelope indicating the proposal title and number along with the Offeror's name and address clearly marked on the outside of the container or envelope. **All proposals must be received and recorded by the Procurement and Facilities Management Division, NMDOT, 1120 Cerrillos Rd., Rm. #103, Santa Fe, NM 87504, no later than 2:00 P.M. (Mountain Daylight Time) on Tuesday, September 11, 2018.**

A Pre-Proposal Conference will be held at 1:30 P.M. (MDT) on Friday, August 24, 2018, at the NMDOT District 3 Auditorium, located at 7500 Pan American Blvd., Albuquerque, NM.

EQUAL OPPORTUNITY EMPLOYMENT: All qualified Offerors will receive consideration of contract(s) without regard to race, color, religion, sex or national origin. Proponents of this work shall be required to comply with the President's Executive Order No. 11246 as amended.

Request for Proposals will be available by contacting Rocio Dominguez by telephone at (505) 827-5338, or by email at Rocio.Dominguez@state.nm.us or by accessing NMDOT's website at: http://dot.state.nm.us/content/nmdot/en/RFP_Listings.html

ANY PROPOSAL SUBMITTED AFTER THE DATE AND TIME SPECIFIED ABOVE WILL BE DEEMED NON-RESPONSIVE AND WILL NOT BE ACCEPTED.

Publish on August 13, 2018

II. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The New Mexico Department of Transportation (NMDOT) is seeking proposals for architectural/engineering (A/E) services from a firm who will aggressively pursue a schedule to plan, design, and furnish plans for a new tandem rest area (2 buildings) to be constructed at the current site of the Mesa Rest Area, 36 miles north of Roswell. All potential offerors are encouraged to read the Request for Proposals carefully, especially mandatory requirements. (Maximum Allowable Construction Costs (MACC) will be \$1,000,000.00. including phased demolition of existing facility)

B. SCOPE OF WORK

Provide architectural/engineering services including, but not limited to, architectural programming; schematic design; design development; construction documents; bidding; construction administration and post-construction. The architect/engineer shall prepare the design development documents consisting of drawings, outline specifications, and other documents to build the entire project as to structural, mechanical, electrical systems, materials, and all other documents essential for the construction of a new tandem rest area (2 buildings) to be constructed at the current site of the Mesa Rest Area, 36 miles north of Roswell. The architect/engineer shall provide quality control oversight during the construction phase to assure the construction contractor is meeting all design and state building requirements. Energy efficiency, ADA, and either open air ventilation or negative ventilation should be considered in any design.

C. SCOPE OF PROCUREMENT

NMDOT reserves the option of renewing the initial contract on an annual basis for three (3) additional years or any portion thereof for the purpose of uninterrupted Architectural/Engineering Services. In no case will the contract, including any and all renewals thereof, exceed a total of four (4) years in duration from the date of the initial Agreement.

D. PROCUREMENT MANAGER

The Agency has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address and telephone number is listed below. All deliveries via express carrier should be addressed as follows:

Rocio Dominguez
Procurement and Facilities Management Division
New Mexico Department of Transportation
1120 Cerrillos Rd., Rm #103
Santa Fe, NM 87504
Ph. (505) 827-5338
Fx. (505) 827-5555
Email: Rocio.Dominguez@state.nm.us

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the NMDOT.

E. DEFINITION OF TERMINOLOGY

This section contains definitions and abbreviations that are used throughout this procurement document.

“Agency”, “Department” or “NMDOT” means the New Mexico Department of Transportation.

“Authorized Purchaser” means an individual authorized by a Participating Entity to place orders against this contract.

“Award” means the final execution of the contract document.

“Business Hours” means 7:45 AM thru 4:30 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“Close of Business” means 4:30 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“Confidential” means confidential financial information concerning offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978 57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45. As one example, no information that could be obtained from a source outside this request for proposals can be considered confidential information.

“Contract” means any agreement for the procurement of items of tangible personal property, services or construction.

“Contractor” means any business having a contract with a state agency or local public body.

“Determination” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

“Desirable” The terms “may”, “can”, “should”, “preferably”, or “prefers” identify a desirable or discretionary item or factor (as opposed to “mandatory”).

“Evaluation Committee” means a body appointed by the Agency to perform the evaluation of Offeror proposals.

“Finalist” is defined as an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“Hourly Rate” means the proposed fully loaded maximum hourly rates that include fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

“IT” means Information Technology.

“Mandatory” The terms “must”, “shall”, “will”, “is required”, or “are required”, identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.

“Minor Technical Irregularities” means anything in the proposal that does not affect the price quality and quantity or any other mandatory requirement.

“Multiple Source Award” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.

“Offeror” is any person, corporation, or partnership who chooses to submit a proposal.

“Procurement Manager” means any person or designee authorized by the Agency to enter into or administer contracts and make written determinations with respect thereto.

“Procurement and Facilities Management Division or PFMD” means the Procurement and Facilities Management Division within the NMDOT Office of Business Support.

“Procuring Agency” means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.

“Project” means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.

“Request for Proposals” or “RFP” means all documents, including those attached or incorporated by reference, used for soliciting proposals.

“Responsible Offeror” means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.

“Responsive Offer” or “Responsive Proposal” means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.

“Sealed” means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The State reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and

should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.

“Staff” means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.

“State (the State)” means the State of New Mexico.

“State Agency” means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the New Mexico Department of Transportation.

“Statement of Concurrence” means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal. (E.g. “We concur”, “Understands and Complies”, “Comply”, “Will Comply if Applicable” etc.)

“Written” means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

III. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere the following schedule:

	<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1.	Issue of RFP	NMDOT	08/13/2018
2.	Pre-proposal Conference (1:30 p.m. MDT)	NMDOT & Offerors	08/24/2018
3.	Acknowledgement of Receipt Form ("Appendix C")	Offerors	08/27/2018
4.	Deadline to Submit Additional Written Questions	Offerors	08/31/2018
5.	Response to Written Questions/RFP Amendments	NMDOT	09/05/2018
6.	Submission of Proposal (Due 2:00 p.m. MDT)	Offerors	09/11/2018
7.	Proposal Evaluation	Evaluation Committee	September 2018
8.	Selection of Finalists	Evaluation Committee	Sept/Oct 2018
9.	Oral Presentation by Finalists (If applicable)	Offeror	Oct/Nov 2018
10.	Best and Final Offers	Offeror	November 2018
11.	Finalize Contract	Offeror/NMDOT	Nov/Dec 2018
12.	Contract Award	NMDOT	Nov/Dec 2018

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section III, Paragraph A.

1. Issue of RFP

This RFP is being issued by the New Mexico Department of Transportation.

2. Pre-proposal Conference

A pre-proposal conference will be held on Wednesday, **August 24, 2018**, beginning at 1:30 p.m. Mountain Daylight Time at the NMDOT D-3 Auditorium, 7500 Pan American Boulevard, Albuquerque, New Mexico 87119. Potential Offerors are encouraged to submit written questions in advance of the conference to the Procurement Manager (see Section I, Paragraph D). The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. All written questions will be addressed at the conference. A public log will be kept of the names of potential Offerors that attended the pre-proposal conference. Attendance at the pre-proposal conference is highly recommended but not a prerequisite for submission of a proposal.

3. Distribution List Response Due

Potential Offerors should hand deliver, or return by facsimile, email or by registered or certified mail the "Acknowledgement of Receipt Form" that accompanies this document (See "Appendix C") to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned by the close of business on **August 27, 2018**. The procurement distribution list will be used for the distribution of written responses to questions and any RFP amendments.

Failure to return this form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the distribution list.

4. Deadline to Submit Additional Written Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this RFP until the close of business on **August 31, 2018**. All written questions must be addressed to the Procurement Manager (See Section II, Paragraph D).

5. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed on **September 5, 2018** to all potential Offerors whose organization name appears on the procurement distribution list.

Additional written requests for clarification of distributed answers and/or amendments must be received by the Procurement Manager no later than one (1) day after the answers and/or amendments were issued.

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 2:00 P.M. MDT ON SEPTEMBER 11, 2018. Proposals received after this deadline will not be accepted. The date and time will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section II, Paragraph D. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to **RFP No. 19-24, MESA REST AREA-ARCHITECTURAL/ENGINEERING SERVICES.** Proposals submitted by facsimile will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to NMSA 1978, § 13-1-116, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required state agency signature on the contract(s) resulting from the procurement has been obtained.

7. Proposal Evaluation

The evaluation of proposals will be performed by an evaluation committee appointed by the Agency. This process will take place during the months of **September 2018**. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

8. Selection of Finalists

The Evaluation Committee will select and Procurement Manager will notify the finalist Offerors in the month of **Sept/Oct 2018**. Only finalists will be invited to participate in the subsequent steps of the procurement. The schedule for the Oral Presentations will be determined at that time.

9. Oral Presentation by Finalists (if applicable)

Finalist Offerors may be required to present their proposals to the Evaluation Committee. The Procurement Manager will schedule the time and location for each Offeror presentation. Presentations, if required, will be held in **Oct/Nov 2018** and will be limited to one (1) hour in duration.

10. Best and Final Offers From Finalists (if applicable)

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers in **November 2018**. Best and final offers may be clarified and amended at the finalist Offeror's oral presentation.

11. Finalize Contract

The contract will be finalized with the most advantageous Offeror in the months of **Nov/Dec 2018**. This date is subject to change at the discretion of the Agency. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the NMDOT reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

12. Contract Award

NMDOT anticipates awarding the contract in the months of **Nov/Dec 2018**. These dates are subject to change at the discretion of the Agency. The contract shall be awarded to the Offeror or Offerors whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points.

13. Right to Protest

Any protest by an Offeror must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, **ONLY** protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15 calendar day protest period shall begin on the day following the award of contracts and will end at 4:30 pm Mountain Standard Time/Daylight Time on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. Emailed protests will not be considered as properly submitted. The protest must be mailed or hand delivered to:

New Mexico Department of Transportation
Procurement and Facilities Management Division
Attn: Richard Martinez, Director
1120 Cerrillos Rd., Room #103
Santa Fe, New Mexico 87504

C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with Chapter 13, NMSA 1978 and NMAC 1.4.1.

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section VI of this RFP.

2. Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

Any contract that may result from this RFP shall specify that the prime Contractor is solely responsible for fulfillment of the contract with NMDOT. NMDOT will make contract payments only to the prime Contractor.

4. Subcontractors/Consent

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the agency awarding any resultant contract, before any subcontractor is used during the term of this agreement.

5. Certifications and Licenses

Potential Offerors must have the proper certifications and licenses to do business in New Mexico as follows:

Corporations:

- File Articles of Incorporation with the New Mexico Secretary of State and record with the County pursuant to NMSA 1978, Section 53-4-6.
- Name of registered agent pursuant to NMSA 1978, Section 53-5-2.
- Certificate of Authority from the New Mexico Secretary of State indicating that the corporation is authorized to conduct business in New Mexico pursuant to NMSA 1978, Sections 53-17-6 and 53-17-8.
- Obtain a Federal employer identification number.
- Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

Limited Liability Companies:

- Registered office and registered agent for service of process that is either a New Mexico resident or domestic corporation, limited liability company, or partnership that is located in New Mexico.
- File an Application for Registration with the New Mexico Secretary of State to conduct business in New Mexico and must obtain a Certificate of Good Standing from the New Mexico Secretary of State to conduct business in New Mexico.
- Obtain a Federal employer identification number.
- Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

Limited Partnerships:

- Apply for Certificate of Registration with the New Mexico Secretary of State pursuant to NMSA 1978, Sections 54-2-1 through 54-2-48.
- File a Statement of Qualifications with the New Mexico Secretary of State pursuant to NMSA 1978, Sections 54-1A-101 through 54-1A-1206.
- Obtain a Federal employer identification number.
- Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

General Partnerships:

- File a Statement of Partnership Authority with the Secretary of State pursuant to NMSA 1978, Sections 54-1A-101 through 54-1A-1206.
- Obtain a Federal employer identification number.
- Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

Sole Proprietorships and Joint Ventures:

- Obtain a Federal employer identification number.
- Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

6. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. NMDOT personnel will not merge, collate, or assemble proposal materials.

7. Offerors' Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative addressed to the Procurement Manager. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

8. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

9. Disclosure of Proposal Contents

- A. Proposals will be kept confidential until negotiations and the award are completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- B. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
- C. Confidential data is restricted to:
 - 1. confidential financial information concerning the Offeror's organization;
 - 2. and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.
 - 3. PLEASE NOTE: The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Agency shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

10. No Obligation

This RFP in no manner obligates the Agency or any of its Programs to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

11. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Procurement Manager determines such action to be in the best interest of the Agency.

12. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending

written notice to the Contractor. The Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the Contractor as final.

13. Legal Review

NMDOT requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

14. Governing Law

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

15. Prohibited Bidding

Pursuant to Section 10-16-13 NMSA 1978 no state agency or political subdivision of the State shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based.

A person accepting a bid or proposal on behalf of a state agency or political subdivision of this State shall exercise due diligence to ensure compliance with this section.

16. Consent to Jurisdiction and Venue

If a recipient of this RFP chooses to offer a proposal, the Offeror understands and agrees that by submitting such proposal to the Agency, they thereby consent to and agree to the exclusive jurisdiction of the Courts of the State of New Mexico for the resolution of any disputes arising under or resulting from the contract selection and/or approval process in response to this RFP, or any dispute arising under or resulting from the performance of any contract resulting from this RFP, which cannot be resolved informally. The Offeror, by submitting such proposal, waives any objection to the personal jurisdiction of the Courts of the State of New Mexico over the Offeror. By submitting such proposal, the Offeror agrees and consents that the Santa Fe County District Court shall have venue and jurisdiction over all matters arising or derived from this RFP.

17. Basis for Proposal

Only information supplied by NMDOT in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

18. Contract Terms and Conditions

The Contract between NMDOT and the Contractor will follow the format specified by the Agency and contain the terms and conditions as set forth in "Appendix B" (Sample

Contract Terms and Conditions). NMDOT reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP.

The Agency discourages exceptions from the contract terms and conditions as set forth in the RFP Sample Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency (and its evaluation team), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the Agency's terms and conditions, as contained in this Section or in "Appendix B", that Offeror must propose specific alternative language. The Agency may or may not accept the alternative language.

General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to NMDOT and will result in disqualification of the Offeror's proposal.

The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of the Contract. In the event the Offeror's proposal conflicts with the RFP, the RFP governs, and, in the event the Agreement conflicts with the proposal, the Agreement governs.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording. If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror) is an explicit agreement by the Offeror that the contractual terms and conditions contained herein are accepted by the Offeror.

19. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions which they expect to have included in a contract negotiated with NMDOT.

20. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between NMDOT and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

21. Contract Negotiations

Contract negotiations may be held in accordance with applicable provisions of 1.4.1.39 NMAC Procurement Code Regulations.

22. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

23. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

24. Change in Contractor Representatives

The NMDOT reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the NMDOT, adequately meeting the needs of the Agency.

25. Notice of Penalties

The Procurement Code, NMSA 1978, § 13-1-28 through 13-1-199, imposes civil, misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

26. Agency Rights

The Agency in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's proposal.

27. Right to Publish

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the Agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or Agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

28. Ownership of Proposals

All documents submitted in response to this Request for Proposals shall become the property of the NMDOT.

29. Confidentiality

Any confidential information provided to, or developed by, the Contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency. The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the Agency's written permission.

30. Electronic Mail Address Required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence.

31. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the NMDOT, the version maintained by the NMDOT shall govern.

32. New Mexico Employees Health Coverage (See "Appendix E")

- A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs.

D. For Indefinite Quantity, Indefinite Delivery contracts (state price agreements without specific limitation on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the Contractor reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

33. Disclosure of Campaign Contributions (See “Appendix D”)

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made for the positions of Governor and Lieutenant Governor. Failure to complete and return the signed unaltered form will result in disqualification.

34. Pay Equity Reporting Requirements

If the Offeror has ten (10) or more employees OR eight (8) or more employees in the same job classification, offeror must complete and submit the required reporting form (PE10-249 or PE250, depending on their size at the time) with their bid or proposal for evaluation purposes.

For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, offeror must also agree to complete and submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract.

Should offeror not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.

Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror must further agree that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.

35. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
 3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
 4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c. Have within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)

- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement.

If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

36. New Mexico Preferences

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate with their proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

A. New Mexico Business Preference

B. New Mexico Resident Veterans Business Preference

An agency shall not award a business both a resident business preference and a resident veteran business preference.

The New Mexico Preferences shall not apply when the expenditures for this RFP includes federal funds.

37. Conflict of Interest; Governmental Conduct Act.

The Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Offeror certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

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IV. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to this RFP.

B. NUMBER OF COPIES

Offerors shall deliver eight (8) identical copies of their proposal to the location specified in Section II, Paragraph D on or before the closing date and time for receipt of proposals.

C. PROPOSAL FORMAT

All proposals must be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. Offerors are strongly encouraged to limit their proposals to a maximum of fifty (50) pages. Exclusions to this limitation will be the letter of introduction, table of contents, covers, dividers, other information, i.e., letters of appreciation, etc., and acknowledgement of amendments (if applicable).

1. Proposal Organization

The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated:

- a) Letter of Transmittal
- b) Table of Contents
- c) Proposal Summary
- d) Response to Contract Terms and Conditions
- e) Response to Mandatory Specifications and Forms
- f) Offeror's Additional Terms and Conditions
- g) Other Supporting Material

Within each section of their proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates or expenses must occur only in the cost response section.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

Offerors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

2. Letter of Transmittal

Each proposal must be accompanied by a letter of transmittal. The letter of transmittal MUST:

- a) identify the submitting organization;
- b) identify the name and title of the person authorized by the organization to contractually obligate the organization;
- c) identify the name, title, email address and telephone number of the person authorized to negotiate the contract on behalf of the organization;
- d) identify the names, titles and telephone numbers of persons to be contacted for clarification;
- e) explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section III, Paragraph C.1;
- f) be signed by the person authorized to contractually obligate the organization;
- g) acknowledge receipt of any and all amendments to this RFP.

V. SPECIFICATIONS

A. Mandatory Specifications and Forms

Offerors shall respond in the form of a thorough narrative to each mandatory specification requiring such. The narratives along with required supporting materials will be evaluated and awarded points accordingly. Failure to address mandatory specifications/requirements, or provide the mandatory forms, will deem your proposal non-responsive.

1. Specialized Design - Offeror's must provide information about the firm's specific technical experience with similar projects that demonstrate competence to successfully complete the project. Indicate the relevance of previous projects to the anticipated scope of work. Demonstrate the successful aspects of past architectural/engineering projects and the corresponding applications to the proposed scope of work.
2. Capacity and Capability - Offeror's must provide information about the business that demonstrates the ability to provide sufficient professional competence, meet time schedules, accommodate cost considerations and project administration requirements. Indicate the relationship of the work in this RFP to the firm's other current projects. Indicate proposed work schedules and milestones, with completion methods and strategies. Indicate key project team members and their specific rolls, experience and background. Demonstrate or indicate project team organization and working relationships. Other items could include references from clients, financial institutions and insurance carriers.
3. Past Record of Performance - Offeror's must demonstrate through historical documentation that the firm has the ability to meet schedules and budgets, as well as user program goals, and final construction project costs. Project schedules should provide information about the progress of work as related to owner schedules and goals as well as the overall success of projects and client satisfaction. References from past clients can be included.
4. Proximity to or Familiarity with Site Location - Offeror's must demonstrate through narrative, graphics or maps the firm's ability to respond quickly to on and off-site requirements for architectural/engineering services and administration of the project. Indicate previous knowledge or experience regarding the project location, and any current work or associated consultants who could enhance the firm's ability to provide timely responses or special expertise to project needs.
5. New Mexico Produced Work - It is in the Agency's best interest to support in-state businesses. Indicate the volume of work to be produced in New Mexico by a New Mexico firm or firms. Identify any out-of-state consultant(s) or business relationships that will be involved on the project and the extent of services to be provided by that firm or firms.
6. Volume of Work Previously Done - Firms shall be scored on any project that has been previously awarded and is, on the date of the submittal, less than 75% complete (see definitions for clarification of "75% complete"). Information on the status of past project awards shall be included in the "Project Listing Form" ("Appendix A") as a requirement of this RFP.

The following formula on fees for projects awarded that are less than 75% complete shall be utilized in assessing scores:

Less than	\$25,000	0 points deducted
\$25,000 to	\$50,000	2 points deducted
\$50,001 to	\$100,000	4 points deducted
\$100,001 to	\$150,000	6 points deducted
\$150,001 to	\$200,000	8 points deducted
\$200,001 and over		10 points deducted

7. Completed Campaign Contribution Disclosure Form (“Appendix D”)

Offerors shall submit with their proposals a completed Campaign Contribution Disclosure Form with their proposal.

8. New Mexico Employees Health Coverage Form (“Appendix E”)

Offerors must agree with the terms and submit a signed New Mexico Employees Health Coverage Form with the submittal of their proposal.

9. Pay Equity Reporting Requirements (Paragraph III.C.34)

Offerors submitting a proposal shall comply with the requirements of Executive Order 2009-049, New Mexico Pay Equity Initiative. **The Executive Order and required forms can be obtained from the following link:**

http://www.generalservices.state.nm.us/statepurchasing/Pay_Equity.aspx

Contractors with less than 10 employees are exempt from the reporting requirements unless 8 or more individuals are in the same job classification.

Contractors with 8 or more employees in the same job classification are required to comply with the Executive Order.

If your firm meets any of the criteria below, for exemption from the Employee Pay Equity Requirements, a statement must be submitted in this section of your proposals indicating that your firm is EXEMPT from the reporting requirements.

- a. Contractors with fewer than ten (10) employees are exempt, unless they have at least eight (8) employees in the same job classification as per the reporting forms.
- b. Contractors receiving a contract resulting from an emergency procurement are exempt, unless they hold other contracts that would already subject them to the requirement.

- c. Out-of-state contractors that have no facilities and no employees working in New Mexico are exempt, if the contract is directly with the out-of-state contractor and fulfilled directly by the out-of-state contractor, and not passed through a local vendor. PLEASE NOTE: If an out-of-state contractor has employees working in the State of New Mexico, whether or not those employees reside in the state, the contractor is subject to the reporting requirements.

10. Resident Business and Resident Veteran's Preference (Does not apply to federally funded projects)

Pursuant to NMSA 1978, 13-1-21, when a public body makes a purchase using a formal request for proposals process, and the contract is awarded based on a point-based system, the public body shall award additional points equivalent to:

- (1) five percent of the total possible points to a resident business; or
- (2) ten percent of the total possible points to a resident veteran business that has annual gross revenues of up to three million dollars (\$3,000,000) in the preceding tax year.

To be awarded points for Resident Business Preference, or Resident Veterans Preference, Offerors **must** include a copy of their preference certificate in this section of your proposal.

A resident veteran business shall not benefit from the preference for more than ten consecutive years. A person that is an owner of a business that is a resident veteran business shall not benefit from the preference for more than ten consecutive years. A person shall not benefit from the provisions as specified in NMSA 1978, 13-1-21, on more than one business concurrently.

Pursuant to NMSA 1978, 13-1-21, Paragraph H, a State Agency shall not award an Offeror points for both a Resident Business Preference and a Resident Veteran's Preference. If the Offeror qualifies for both he/she will only be awarded points for the Resident Veteran's Preference. Veteran Businesses will receive the Resident Business Preference once the cap for Resident Veteran Preference has been exceeded.

Applications for Resident Business Preference and Resident Veteran's Preference are now being processed through the New Mexico Department of Taxation & Revenue. If you have a preference certification number that was issued by the New Mexico State Purchasing Division please follow the link below to apply for a new Resident Business or Veteran Business Preference number.

<http://www.tax.newmexico.gov/businesses/pages/in-statepreferencecertification.aspx>

IF YOU DO NOT QUALIFY FOR A RESIDENT BUSINESS OR RESIDENT VETERAN PREFERENCE PLEASE PROVIDE A STATEMENT STATING YOU DO NOT QUALIFY IN THIS SECTION OF YOUR PROPOSAL. IF YOU DO NOT QUALIFY FOR EITHER PREFERENCE YOUR PROPOSAL WILL BE ACCEPTED, HOWEVER YOU WILL NOT RECEIVE POINTS FOR PREFERENCE.

VI. EVALUATION

A. Evaluation Factors/Points

The NMDOT will evaluate responsive proposals and assign a score in each category, not to exceed the maximum allowed score for that category, as determined through the Offeror's attention to the criteria detailed in the following sections. The amount of discussion to be applied to each listed topic is an individual choice of the Offeror, however, discussion should be detailed enough to inform and educate evaluators.

Proposals will be scored based upon a comparison of the information submitted by each Offeror against the evaluation criteria outlined below.

EVALUATION FACTORS	POINTS AVAILABLE
1. Specialized Design	30 Points
2. Capacity and Capability	25 Points
3. Past Record of Performance	20 Points
4. Proximity or Familiarity with Site Location	5 Points
5. New Mexico Produced Work	10 Points
6. Volume of Work Previously Done	10 Points
Total Maximum Allowable Points	100 Points

B. Evaluation Process

The evaluation process will follow the steps listed below:

1. All Offeror proposals will be reviewed for compliance with the mandatory specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section III, Paragraph B.6.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section III, Paragraph C.22.
4. Responsive proposals will be evaluated on the factors in Section VI that have been assigned a point value. The responsible Offeror(s) whose proposal is most advantageous to the NMDOT, taking into consideration the evaluation factors in Section VI and successful negotiations, will be recommended for contract award as specified in Section III, Paragraph B.11. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score. In the event of oral presentations responsible Offerors with the highest scores resulting from the written evaluations will be selected as finalist Offerors. Points awarded from the oral presentations will be added to the previously assigned points from the written evaluations to attain final scores.

APPENDIX A – PROJECT/CONTRACT LISTING FORM

Offerors shall list all current contracts with the NMDOT, containing similar work(s) to the scope of work as contained in the RFP. This form shall only include the contract(s) that the proposing Offeror has with the NMDOT; subcontractor information is not required.

FIRM: _____ DATE: _____

Table A – Project Specific Contracts

PROJECT DIRECTLY AWARDED TO FIRM	CONTRACT DATE	CONTRACT AMOUNT (in dollars \$)	% COMPLETE TO DATE	CONTRACT AMOUNT EXPENDED TO DATE (in dollars \$)	CONTRACT REMAINING BALANCE (in dollars \$)
1.					
2.					
3.					
4.					
5.					
				TOTALS	

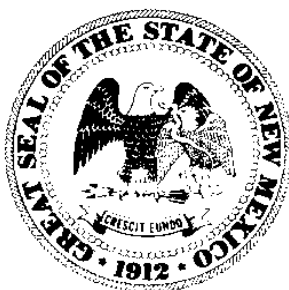
Appendix B

SAMPLE AGREEMENT BETWEEN OWNER AND ARCHITECT

(THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.)

Project (short title):
Location:

Contract No.:
RFP No.:



Distribution to:

- Owner
- Architect
- Other

This Agreement entered into this day of , 2018, by and between:

New Mexico Department of Transportation
PO Box 1160
Santa Fe, New Mexico 87502
TELEPHONE:
FAX:

Hereinafter "Owner"; and

TELEPHONE:
FAX:

Hereinafter "Architect".

NOTE: Professional and technical services shall be provided by the Architect, , whose New Mexico Architect's seal and certificate number is.

TABLE OF CONTENTS

Article 1	Definitions	Article 8	Architect's Records and Audit
Article 2	Architect's Services and Responsibilities	Article 9	Ownership and Use of Documents
		Article 10	Termination of Agreement
Article 4	Owner's Responsibilities	Article 11	General and Special Provisions
Article 5	Construction Cost	Article 12	Maintenance
Article 6	Reimbursable Expenses	Article 13	Basis of Compensation
Article 7	Payment to the Architect	Article 14	Other Conditions or Services

RECITALS

WHEREAS, the New Mexico Legislature, pursuant to Laws of XXX, Chapter XX, Section X item XX has funded the above referenced Project; and

WHEREAS, the Architect was selected pursuant to the Architect, and Land Surveyor Selection Committee pursuant to Section 13-1-120 through 13-1-124 NMSA 1978; and

WHEREAS, the Owner is authorized to enter into a contract to design and construct the Project pursuant to Sections 15-3B-4(10), and 15-3B-6, NMSA 1978; and

WHEREAS, the Owner must hire a registered Architect of New Mexico whenever any public work involves architectural services, pursuant to Section 61-15-9 (A), NMSA 1978; and

WHEREAS, the Architect hereby represents that it employs the named Project Architect, and that such Architect is a registered Architect of New Mexico; and

WHEREAS, the Owner agrees to hire the Architect, and the Architect agrees to provide professional and technical services as required hereinafter for the Project in accordance with the terms and conditions set forth in this Agreement;

IT IS THEREFORE AGREED AS FOLLOWS:

ARTICLE 1

DEFINITIONS

For purposes of this Agreement, the following definitions shall apply throughout the contract and to all attachments incorporated herein, unless otherwise specified.

- 1.1 ARCHITECT: The firm named in this Agreement which employs a registered Architect of New Mexico or an individual registered Architect of New Mexico. In the instance of a firm, the term "Architect" shall include the Project Architect.

- 1.3 CODES: All federal, state, and local codes applicable to the Project.

- 1.4 DIRECT SALARY: The gross wages, which do not include costs of employer beyond the amounts of the paychecks.

- 1.6 MACC: Maximum Allowable Construction Cost is the total sum available for construction purposes, including furnishings and equipment, but excluding professional fees, Owner's contingency funds and acquisition costs, and other costs which are the responsibility of the Owner as described in Article 5 and Article 6 of this Agreement.

- 1.7 OWNER: The New Mexico Department of Transportation.

- 1.8 PROJECT: The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part. The Project is further defined in Article 2 of this Agreement.

- 1.9 PROJECT ARCHITECT: The individual registered Architect of the State of New Mexico who shall sign and affix his New Mexico Architect's Seal to all plans, designs, drawings, specifications, and reports which involve the Project. The Project Architect shall be mutually agreed upon by Owner and Architect at the time this Agreement is entered into by the parties and shall be named herein.

- 1.10 REIMBURSABLE EXPENSES: Expenses in addition to the basic services compensation which shall include actual expenditures made by the Architect or its employees in the interest of the Project (while performing architectural services pursuant to this Agreement) and limited to those items listed in Article 6 of this Agreement and authorized in writing by the Owner.

- 1.11 SITE: The physical location on which the Project is built, including all land acquired for the Project or associated with the Project, including all easements and rights-of-way.

- 1.14 OTHER DEFINITIONS: The remaining definitions are in Article 1, Definitions, of the conditions of the Contract for Construction, as provided as a part of Exhibit G hereto.

ARTICLE 2

ARCHITECT'S SERVICES AND RESPONSIBILITIES

2.0 EXTENT OF AGREEMENT AND SCOPE OF WORK: This Agreement includes the provisions of the **Request for Proposals for Architectural Services, Project Title; RFP Number:** , the architect's proposal, and all documents attached thereto and all of which are hereby incorporated by reference as a part of this Agreement as if fully set forth herein. In case of conflict, the documents supersede each other in accordance with the following hierarchy: codes and applicable law, the body of this Agreement, and attachments to this Agreement.

The scope of work shall include, but not be limited to the following full basic architectural/engineering services:

Full Basic Services will include: Programming (including site investigation and prioritization scheduling), Schematic Design (including preliminary alternative materials and systems recommendations, including life cycle maintenance briefing and feasibility of utilizing alternative

Agreement Between Owner and Architect

Page 3 of 27

energy sources), Design Development, Construction Documents, Bidding, Construction Administration, Project Closeout and 11 Month Warranty Inspection. Construction administration will include a minimum of weekly project site meetings and inspection. Project closeout services will include one design process analysis meeting to assess implementation of sustainable design and construction requirements into the project and review any lessons learned from the overall effort.

Description of Scope: **The Scope of Work shall include, but not be limited to the following:**

The design and construction of the project shall conform to the State of New Mexico Green Building Guidelines as defined in Exhibit D.

The owner will provide program and operational support through all phases of the project. The owner will provide technical assistance and overall project management. Owner reserves the right to revise the scope of work or the MACC for this project, and adjust the fee accordingly.

2.1 BASIC SERVICES: The intent of this agreement is to design completely functional and operational facilities within the identified scope and cost limitation.

The Architect's basic services shall consist of the following:

- A. Programming Phase
- B. Schematic Design Phase
- C. Design Development Phase
- D. Construction Documents Phase
- E. Bidding or Negotiation Phase
- F. Construction Phase
- G. 11-month Warranty Inspection

The services to be provided during each phase are listed below and shall include all consulting services required by the Architect to provide the service.

2.1.2 The architect shall request from the owner the following:

- A. Information sufficient for the Architect to develop program criteria including the owner's goals, objectives, and needs, and the organizational chart of individuals and equipment that shall occupy the Project.
- B. To the extent practicable and reasonable, the Architect shall incorporate the owner's requests into the documents for construction; however, the Architect is responsible solely to the Owner for the types of material incorporated into the construction, the size of the facilities constructed, and to design within the MACC.
- C. A list (by manufacturer and model number) of special equipment (other than 110 volt, 60HZ, requiring less than 10 amps) that requires utility services, including telecommunication equipment such as data transmission and computer lines that shall be designated by Department of Information Technology (DoIT), Infrastructure Voice Radio (IVR) (Telephone: 505.841.4269).

2.0.3 FURNISHINGS AND EQUIPMENT: The Architect shall provide as a basic service all required work for design, selection, and preparation of contract documents, and bidding for the procurement of furniture, furnishings, and related equipment, unless otherwise noted in Article 14.

2.0.4.1 APPROPRIATIONS: The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate upon written notice being given by the Owner to the Architect. The Owner's determination that sufficient appropriations are not available shall be accepted by the Architect and shall be final.

2.1.5 SOILS ENGINEERING: The Architect shall acquire the services of a Soils Engineer or other consultant when the Architect deems such services necessary. The Architect shall, during the Schematic Design Phase, submit to the Owner a statement of necessary soils engineering services that will be required.

2.1.6 SOFTWARE REQUIREMENTS:

- A. Drawing Formats. All CAD drawings shall be supplied in DWG format and be readable by the Owner-supported CAD desktop software (Autodesk AutoCAD). Being 'readable' means the ability to open a file without any errors (such as proxy, font substitution, etc.) and with objects, layers, and other file properties remaining intact.

- B. Other Formats. File formats for word processor documents, spreadsheet documents, or slide presentations shall be those used by the Microsoft family of office software such as Word, Excel, and PowerPoint. Contact the Owner for version. Macros may be included with these documents provided they are virus free, their function is explained next to the code, and they are not write protected.
- C. Graphics shall be submitted in TIF, GIF, JPG, CALS, or PDF file format (compressed image formats only). This option is intended for photos, conceptual sketches, etc., and not to indicate that raster file drawings will be accepted in place of AutoCAD DWG files.
- D. Data file formats for projects that employ information contained in a database or spreadsheet shall be those used by one of the following: Oracle, Microsoft Access, Microsoft SQL, or Microsoft Excel. All linkages of non-graphical data with graphic elements, relationships between database tables, and report formats shall be maintained. All database tables shall conform to the structure and field naming guidance provided by the Owner. The Architect shall confirm database file format preference with the Owner prior to issuance of database file.
- E. File formats for project management documents shall be either that used by Microsoft Project or hard copy. Confirm file format with the Owner. Save project files with baseline.
- F. Deliverables integrating multiple file formats may be submitted as a PDF (version 4 or later) in addition to the base file structure. Examples include reports, photographs, and manuals created by using a variety of software packages and file formats. Confirm deliverable format preference with the Owner.
- G. Building Information Modeling (BIM). Projects and project teams are encouraged to utilize 3D object model and other building information model technology and software applications (including during project stages of planning, design, construction, and handover to space management and facility operations and maintenance). Outputs from these applications are acceptable as deliverables to the Owner, provided that 2D output is also submitted that fully complies with all provisions herein.

2.0.7 STANDARD OF CARE: The Architect warrants that he and his employees shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties they perform in connection with the services to be performed under this Agreement. These services shall be performed in accordance with the standards of the profession. The Architect further agrees that he will require his consultants, sub consultants, joint ventures, and agents to warrant to the Architect that they possess the experience, knowledge, and character necessary to qualify them individually for the particular duties that are performed in connection with the services to be performed for the Architect on the Project. This warranty shall further state that the services so entered shall be performed in accordance with the standards of the profession. Such warranty by consultants, sub consultants, joint ventures, and agents shall not be construed as a diminution of the Architect's liability and responsibilities to the Owner.

2.1 PROGRAMMING PHASE

- 2.1.1 The program shall establish goals, collect facts, identify concepts, and determine functional needs necessary to complete the Project within the legislative mandate. Based on the data provided by the owner and pursuant to adequate consultation with the owner, the Architect shall prepare a document that adequately defines the scope of the Project. This document shall reflect the limits of the MACC.
- 2.1.2 Not Used.
- 2.1.3 The Owner and the owner shall work with the Architect to ensure that the information required by the Owner is made available to the Architect. This information and other requests concerning organization of functions shall be provided in the form of written memoranda.
- 2.1.4 The Owner shall schedule a meeting between the Architect and the owner to define the relationship among all parties. The Architect shall advise the Owner, in writing, of any information he requires which has not been provided by the Owner and/or the Owner Representative, or any conflicts between the established program requirements, the MACC, and the legislation authorizing the Project.
- 2.1.5 The Architect shall obtain the approval of the Owner Representative and the Owner, in writing, of the Program Phase before commencing work on the Schematic Design Phase. The Architect shall provide written confirmation, to be transmitted with the Program Document to the Owner, that the Architect has visited the site, familiarized himself/herself with the local conditions under which the work is to be performed, correlated his/her observations with current code requirements and life safety needs, and has a clear understanding of existing conditions for the Project.

2.2 SCHEMATIC DESIGN PHASE

- 2.2.1 From the approved program, the Architect shall prepare Schematic Design drawings and documents describing the general planning concepts, probable architectural, engineering, and building systems, types of materials envisioned and preliminary alternatives, a breakdown of the budget on current area, volume, or other unit costs, and the approximate dimensions of the programmed areas. The Architect shall incorporate in the Schematic Design drawings and documents the provisions of the PCD Green Building Standards as provided as a part of Exhibit D and incorporated herein by reference. The Architect shall obtain the written approval of the the Owner of the Schematic Design drawings and documents before commencing work on the Design Development Phase. The current State-adopted Uniform Building Code (UBC) and current ASHRAE 90.1 are incorporated into this Agreement by reference. Where applicable, the provisions of these documents shall apply. The Architect shall brief, and obtain the written approval of, the Owner of the Schematic Design drawings and documents. This review and approval shall include the life cycle costs required by Subparagraph 12.1.4 of this Contract.

- 2.2.2 The Architect shall provide a feasibility report as part of this phase on the use of energy sources other than fossil fuels for the heating and air conditioning of the proposed building (Section 15-3-12, NMSA 1978).
- 2.2.3 The Architect shall request site survey data in accordance with Paragraph 4.2.
- 2.2.4 The responsibility for bringing the Project within the MACC and compliance with construction directives remains with the Architect, as elaborated in Subparagraph 5.2.2. Should the Architect at any time conclude that the budget and the scope of the work to be accomplished are incompatible; the Owner shall be notified immediately in writing, with proposed recommendations to reconcile the incompatibility.

2.3 DESIGN DEVELOPMENT PHASE

- 2.3.1 From the approved Schematic Design drawings and documents, the Architect shall prepare the Design Development Documents consisting of drawings, outline specifications, and other documents to fix and describe the size and character of the entire Project as to structural, mechanical, and electrical systems materials and such other design essentials as may be appropriate. Additionally, these documents shall identify design features, program modifications, the probable Project Schedule, equipment installed in the Project or furnishings required, and a statement that identifies the need for any additional data, surveys, or tests. The Architect shall acquire the approval, in writing, of the Owner of all documents associated with the Design Development Phase before commencing work on the Construction Documents Phase.
- 2.3.2 The Architect shall submit to the Owner for review and written approval a refined statement of Probable Construction Cost at the completion of the Design Development Phase. Should the Architect conclude, at any time, that the budget and the scope of the work to be accomplished are incompatible; the Owner shall be notified immediately in writing, with proposed recommendations to reconcile the incompatibility.
- 2.3.3 Should the Owner initiate or require a material change from the approved Design Development Documents and there is no fault or responsibility of the Architect related to the Owner's initiation or requirement of the change, the Architect's effort implementing said change(s) shall be compensated as an Additional Service and the schedule for delivery of Architect's services shall be equitably adjusted if/as appropriate.

2.4 CONSTRUCTION DOCUMENTS PHASE

- 2.4.1 From the approved Design Development Documents, the Architect shall prepare Bidding Documents setting forth in detail the requirements for the construction of the entire Project, which shall at a minimum include bid forms, the Conditions of the Contract for Construction (general, supplementary, and other conditions of the contract), and the Standard Form of Agreement between Owner and Contractor. The Architect shall incorporate in the Bidding Documents the provision of Information Available to Bidders as provided as a part of Exhibit G and incorporated herein by reference. The Invitation to Bid shall be prepared by the Architect or as directed by Owner, the bid

date and time, which shall be prepared by the Owner and Architect and submitted to the Bidding Phase by the Owner. The Architect shall assist the Owner in filing the required documents for the approval of any governmental or other authorities having jurisdiction over the Project assigned.

- 2.4.1.1 Construction Drawings: In addition to the electronic CAD files, PDF files and related electronic documents, the Architect shall provide one full drawing set to the Owner. The hard copy should be printed on non-glossy polyester film 3-mil thickness minimum. Standard Sheet sizes may be Architectural sizes 24" x 36" or 30" x 42".
- 2.4.1.2 Electronic Data: The Owner requires that final Construction Documents and Specifications are prepared using computer technology in the formats prescribed in Subparagraph 2.0.6.
- 2.4.2 The Bidding Documents shall be based upon information contained in the Design Development Drawings and other documents previously approved by the Owner. Upon completion of the Bidding Documents, the Architect shall brief the Owner on the Bidding Documents, specifically addressing previously approved requirements contained in the Design Development Drawings and other documents. At this briefing, the Architect shall, furnish to the Owner a detailed cost estimate.
- 2.4.3 The responsibility for bringing the Project within the Maximum Allowable Construction Cost (MACC) and compliance with construction directives remains with the Architect, as elaborated in Article 5. Should the Architect at any time conclude that the budget and the scope of the work to be accomplished are incompatible; the Owner shall be notified immediately in writing, with proposed recommendations to reconcile same.
- 2.4.4 The Architect shall furnish Bidding Documents to the Owner bearing the approval of the following:
 - A. Construction Industries Division, Regulation and Licensing Department;
 - B. If applicable, Occupational Health and Safety Bureau, Environmental Protection Division, Environment Department;
 - C. If applicable, the Health Facility Licensing and Certification Bureau, Health Improvement Division, Department of Health;
 - D. If applicable, the New Mexico Environment Department;
 - E. The Energy, Minerals, and Natural Resources Department; and
- 2.4.5 The Architect shall provide a signature-approval block on the front sheet of the drawings and specifications for:
 - B. the owner
 - C. Utility companies (as appropriate),
 - D. Architect Certification: Project meets as a minimum – current ASHRAE 90.1, requirements, and

The Architect shall obtain review and signatures of all.

- 2.4.6 Only materials and systems available at the time of this Agreement or reasonably believed to become available prior to the expiration of the Construction Contract shall be specified in the

Contract Documents. The Bidding Documents shall include a list of those items (or categories of items) for which shop drawings or submittals are required.

- 2.4.7 Any fees incurred in the preparation of the detailed cost estimate(s) provided by the Architect shall be paid by the Architect.
- 2.4.8 Project Wage Rate Determination: The Architect shall request from the State of New Mexico Labor and Industrial Division a minimum wage rate determination for the Project pursuant to Section 13-4-11, NMSA 1978. The Architect shall provide the Division a description of the Project, an estimate of construction cost, an approximate bid opening date, and any other pertinent information required by the Labor and Industrial Division. The Architect shall include the wage rate determination in the Bidding Documents.

2.5 BIDDING PHASE

- 2.5.1 The Architect, following the Owner's written approval of the Bidding Documents, shall assist the Owner in obtaining bids and in awarding and preparing contracts for construction. The finalized Invitation to Bid shall be prepared by the Owner and forwarded to the Architect for bidding purposes. shall provide sets of Bidding Documents as required to the Owner, sets as required by the reviewing agencies, and sets as appropriate to all prime Bidders requesting documents for bidding purposes. Prime Bidders shall be defined as General Contractors, who will be allowed no more than three sets; major subcontractors as listed in the form; or other major suppliers.
 - 2.5.2.1 The Architect shall provide an additional number of documents to be placed in plan rooms as well as in the Architect's office for review by prospective Bidders.
 - 2.5.2.2 The Architect shall also make sets available to other prospective parties as requested. The Architect may charge the cost of reproduction to the party requesting the documents.
- 2.5.3 The Architect shall clarify and answer any questions about the Bidding Documents during the bidding process and shall issue Addenda as required to all Bidders, the State Purchasing Office, the Owner.

2.6 CONSTRUCTION PHASE—ADMINISTRATION OF THE CONSTRUCTION CONTRACT

- 2.6.1 The Construction Phase will commence with the award of the Contract for Construction and continues until the eleven-month inspection and report is submitted by the Architect and approved by the Owner.
- 2.6.2 The Architect shall provide administration of the construction contract as required and defined in the Conditions of the contract for Construction. The extent of the Architect's duties and responsibilities and the limitations of his authority there under shall not be modified without the Owner's written consent.
- 2.6.3 The Architect shall be the representative of the Owner during the Construction Phase and shall advise and consult the Owner. Instructions to the Contractor shall be forwarded only through the

Architect. The Architect shall have authority to act on behalf of the Owner only to the extent provided in the Contract Documents and any amendments thereto.

- 2.6.4 The Architect shall at all times have access to the Work, whether it be in preparation or progress.
- 2.6.5 The Architect shall submit to the Owner, for approval, a list of critical inspection points based upon the construction schedule furnished by the Contractor. The Architect shall make periodic visits to the site at such other times as appropriate during the progress of the Work for the purposes of notifying the Owner on the progress and condition of the Work and adequately represent the Owner. Additionally, the Architect shall familiarize himself with the progress and quality of the Work and determine if the Work is proceeding substantially in accordance with the Contract Documents. On the basis of on-site observations, the Architect shall guard the Owner against defects and deficiencies in the construction. Should the Architect determine that any portion of the Work varies from the requirements of the Contract Documents, he shall immediately notify the Contractor and the Owner of the nature of the work required to correct such non-compliance. In addition, the Architect shall, eleven months after substantial completion, schedule a meeting with the Owner and Project Architects to evaluate the building and its operations; inspect architectural systems; and endeavor to discover defects in materials, equipment, and workmanship.
- 2.6.6 The Architect shall provide a minimum of weekly on-site inspections during the construction phase in an attempt to guard the Owner against defects and deficiencies in the construction, in addition to critical inspections and other inspections required by the progress of the Work. The results of all inspections shall be documented in field reports submitted to the Owner within seven days of each such inspection.
- 2.6.7 The Architect shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, subcontractors, or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.
- 2.6.8 The Architect shall determine, certify, and make recommendations to the Owner for payment of the amounts owing to the Contractor subject to the Owner's approval, based on observations at the site and on evaluations of the Contractor's Applications for Payment. The Architect shall issue Certificates for Payment in such approved amounts as provided in the Contract Documents.
- 2.6.9 The issuance of a Certificate and recommendation for payment shall constitute representation by the Architect to the Owner, based on the Architect's observations at the site as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that the quality of the Work is substantially in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified.

However, the issuance of a Certificate for Payment shall not be a representation that the Architect has made any examination to ascertain how and for what purpose the Contractor has used the money paid on account of the Contract Sum.

- 2.6.10 The Architect shall render interpretations of the documents necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written decisions within a reasonable time on all claims, disputes, and other matters in questions between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.
- 2.6.11 Interpretations and decisions of the Architect shall be consistent with the requirements and intent of the Contract Documents and shall be in written or graphic form.
- 2.6.12 The Architect's decisions in matters relating to artistic effect shall be final if consistent with the requirements of the Contract Documents.
- 2.6.13 The Architect shall have authority to reject work that does not conform to the Contract Documents. Where rejected Work is not promptly corrected, the Architect shall recommend to the Owner that the Work shall stop. Whenever, in the Architect's professional opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed, or completed.
- 2.6.14 The Architect shall review the Contractor's submittals, such as shop drawings, product data, and samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents; and, for each submittal, the Architect shall designate in writing that the Architect:
 - A. Takes no exception to this submittal,
 - B. Rejects the submittal,
 - C. Requires corrections as noted by the Architect,
 - D. Requires revisions and resubmitted to the Architect,
 - E. Requires the Contractor to submit the specified item, or
 - F. Approves as corrected.

Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- 2.6.15 All Change Orders, defined in the Conditions of the Contract for Construction, shall be prepared by the Architect. Such Change Orders shall not become effective or binding on the Owner or Contractor until signed by the Owner and others whose signatures are required therein. Attached as pages 00800-19 and 20 of Exhibit G and incorporated into this Agreement by reference is a copy of the Change Order form. Using this form, the Change Order shall be initiated by the party requesting a change. Approval in writing by the Owner of a completed Change Order modifies this Contract to the extent indicated. No Work that could reasonably be expected to alter the contract price or

materially alter the Project shall be undertaken until the Owner has approved a completed Change Order that outlines the desired change. Any deviation from the above shall be considered a material breach of this Contract. The Owner reserves the right to seek remedy from the Architect for Change Orders made necessary due to the Architect's errors and omissions.

- 2.6.16 Upon prior notice to the Owner, the Architect shall conduct inspections to determine the Dates of Substantial Completion and Final Completion. The Architect shall obtain and forward to the Owner for the Owner's review written warranties and related documents required by the Contract Documents and assembled by the Contractor. The Architect shall then issue a final Certificate for Payment.
- 2.6.17 The extent of the duties, responsibilities, and limitations of authority of the Architect as the Owner's representative during construction shall not be modified or extended without written consent of the Owner and the Architect
- 2.6.18 Should the Architect, his staff, or his consultants direct the Contractor or his Subcontractors to undertake work for which additional compensation could reasonably be expected, and if such work is not:
- A. An emergency endangering life and property,
 - B. Required by the Contract Documents, or
 - C. Required by approved Change Orders (signed by the Architect, the Owner, and the Contractor),

payment for such work, if accomplished without written authorization, shall not be borne by the Owner and shall constitute adequate grounds for dismissal or other action against the Architect.

- 2.6.19 As part of the Architect's Basic Services, the Architect shall modify the original reproducible drawings and the Project Manual, delineating recorded built conditions of the Project or record documents compiled from the records of the Contractor and the Architect, showing all changes in the Work. This set of Documents shall also include record documents showing actual location of all Work.
- 2.6.20 Record Drawings: Record drawings and documents are to be delivered to the Owner within 15 days following Substantial Completion of the project by the Architect. Record Drawings shall be produced by the Architect and shall consist of a set of reproducible drawings sheets, based on a Mylar format, specifications on 8 ½ X 11 in. paper and shall provide all the As-built conditions documented by the Contractor for the project. The Architect shall also provide to the Owner a set of PDF drawing files and CAD drawing files formatted on CD-ROM with file format to follow the standard utilized by the Owner at the time of this agreement. The CD ROM files shall duplicate the conditions documented on the Mylar Record Drawings. Further, the Architect shall deliver three (3) sets of the operations and maintenance manuals, hard copy and electronic; written warranties and related documents.

2.7 PROJECT CLOSEOUT AND 11 MONTH WARRANTY INSPECTION PHASE

2.7.1 Project closeout services will include one design process analysis meeting to assess implementation of sustainable design and construction requirements into the project and review any lessons learned from the overall effort (see Exhibit D PCD Green Building Standards).

2.8 PROJECT REPRESENTATION BEYOND BASIC SERVICES

2.8.1 Architect's Project Representative: If the Owner and the Architect agree that more extensive representation for inspection of the Site than that described in Subparagraph 2.6.5 shall be provided, the Architect shall, upon written authorization of the Owner, provide one or more Project Representatives to assist the Architect in carrying out such responsibilities at the site.

2.8.2 Subject to the Owner's approval, an Architect's Project Representative shall be selected, employed, and directed by the Architect. The Architect shall be compensated therefore as mutually agreed between the Owner and the Architect as set forth in an approved amendment to this Agreement, which shall, in addition, describe the duties, responsibilities, and limitations of authority of such Project Representative(s).

2.8.3 Through the inspections of such Project Representative(s), the Architect shall provide further protection for the Owner against defects and deficiencies in the Work to determine that the Work is carried out in conformance with the plans and specifications; but the furnishing of such project representation shall not diminish the rights, responsibilities, or obligations of the Architect as described in this Agreement.

2.8.4 The Owner reserves the right to designate an Owner Representative in lieu of an Architect's Project Representative to provide additional site representation for the Owner beyond that provided by the Architect. If the Owner elects to provide an Owner Representative in lieu of a Project Representative, this subsection shall not diminish the rights, responsibilities, or obligations of the Architect established in this Agreement. The Owner Representative's duties and limits of authority shall be established so as not to conflict with those of the Architect. The Architect shall cooperate with the Owner Representative in the performance of his duties.

2.8.5 The Owner reserves the right to employ an independent cost consultant to provide value and cost architectural or engineering services on the Project. If a cost consultant is retained, an amendment to this Agreement will be required identifying the duties and limits of authority of the cost consultant. The Architect shall cooperate with the cost consultant in the performance of the cost consultant's duties.

2.9 ADDITIONAL SERVICES

The following Services shall be provided when authorized in advance in writing by the Owner, and they shall be paid for by the Owner as provided in Paragraph 13.3. Attached as Exhibit E and incorporated into this Agreement by reference is a copy of the Architect Additional Services Proposal/Amendment form.

- 2.9.1 Providing planning surveys, site evaluation, environmental impact studies, or comparative studies of prospective sites other than those services required under Basic Services to provide a complete and operable facility.
- 2.9.2 Providing services related to future facilities, systems, and equipment that are not intended to be constructed during the Construction Phase.
- 2.9.3 Making revisions in drawings, specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control or not the responsibility of the Architect. This does not apply to revisions necessary for final approval of Programming, Schematic Design Studies and Statement of Project scope, and Design Development Documents, or to revisions necessary to bring the Project within the designated MACC. The Architect shall receive written authorization from the Owner before commencing work on any change or alteration to the Contract Documents.
- 2.9.4 Preparing drawings, specifications, and supporting data and providing other services in connection with Change Orders, provided that the adjustment in the Basic Compensation resulting from the adjusted Construction Cost is not for work which should have been provided pursuant to Basic Services and provided that such Change Orders are required because of causes not related to the actions or responsibilities of the Architect.
- 2.9.5 Conducting investigations, surveys, valuations, inventories, or detailed appraisals of existing facilities when such work is not covered by this Agreement.
- 2.9.7 Providing consultation concerning replacement of any Work damaged by fire or other cause during construction and furnishing services as may be required in connection with the replacement of such Work.
- 2.9.6 Providing tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

2.10 TIME

- 2.10.1 The Architect shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The Architect shall submit, for the Owner's approval and as a part of this Contract, a schedule for the performance of the Architect's services and shall include allowances for periods of time required for the Owner's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by the Owner, shall not, except for reasonable cause not within the control of the Architect, be exceeded by the Architect (see Exhibit A, Work Order Form). Failure of the Architect to perform within this schedule except through authorized extensions thereto shall constitute a basis for termination and/or withholding of payment until schedule compliance is achieved by the Architect.

- 2.10.2 Time of Essence: All time limits stated in this Agreement are of the essence in the performance of this Agreement.
- 2.10.3 Term: This Agreement shall terminate **48** months from the Department of Finance and Administration approval unless terminated sooner pursuant to Article 10 of this Agreement.

ARTICLE 4

OWNER'S RESPONSIBILITIES

- 4.1 The Owner may designate, in writing, a representative authorized to act in his behalf, however, authority for final approval of the Program Documents, the Contract Documents, or any Change Order is retained by the Owner. The Owner shall examine documents submitted by the Architect and shall render decisions promptly to avoid unreasonable delay in the progress of the Architect's services. The Owner shall provide information to the Architect regarding the owner's requirements in the development of Program Documents for the Project.
- 4.2 The Owner shall furnish a legal description and a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements, and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and complete data pertaining to existing buildings, other improvements, and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths.
- 4.2.1 The Architect shall return all documents and drawings provided under Paragraph 4.2 to the Owner upon the Owner's request, but in no case later than when the Construction Documents Phase has been completed (see Section 2.4 herein). Payment for the Construction Documents Phase will not be made to the Architect until the Owner has received said documents and drawings.
- 4.2.2 The Owner reserves the right not to provide certain project-related documents or drawings to the Architect at the Owner's discretion.
- 4.3 If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the Owner to the Architect.
- 4.4 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Architect's services and of the Work.

ARTICLE 5

- 5.1 **MAXIMUM ALLOWABLE CONSTRUCTION COST:** The Maximum Allowable Construction Cost (MACC) shall not exceed XXXXXXXXXXXX dollars and no cents **(\$XXXXXX)**.
(or)

The Maximum Allowable Construction Cost shall be established in the programming and schematic design phases of this project.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

- 5.2.1 Evaluations of the Owner's Project budget, statements of probable construction cost, and detailed estimates of construction cost prepared by the Architect represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that the Architect does not have control over the cost of labor, materials, or equipment; over the Contractor's methods of determining bid prices; or over competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established, or approved by the Owner, or from any Statement of Probable Construction Cost or other cost estimate or evaluation prepared by the Architect.
- 5.2.2 The MACC is established, as a condition of this Agreement, as a fixed limit of Construction Cost for design and bidding purposes. The Architect shall be permitted to determine what materials, equipment, component systems, and types of construction are to be included in the Bidding Documents to bring Construction Cost within the MACC. With the written consent of the Owner, the Architect may also include in the Bidding Documents either additive or deductive alternate bids to adjust the Construction Cost to the fixed limit.
- 5.2.3 If bidding or negotiations with potential contractors have not commenced within two months after the Architect submits Bidding Documents to the Owner, the Project budget and/or MACC shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Bidding Documents to the Owner and the date on which proposals are sought.
- 5.2.4 The MACC, therefore, is established as a condition of this Agreement. When it is exceeded by the lowest bona fide bid, the Owner may;
- A. Give written approval of an increase in the MACC,
 - B. Authorize re-bidding the Project within a reasonable time, or
 - C. Cooperate with the Architect in revising the Project scope and, as required, to reduce the Probable Construction Cost.

If the Owner elects to reduce the Probable Construction Cost, the Owner shall cooperate with the Architect in revising the quality and scope of the Project; and the Architect, without additional charge for services or re-printing of the Drawings and Specifications, shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the MACC. The Architect shall then assist the Owner through the Bidding process (see Subparagraph 2.5.1). When the detailed cost estimate required by Subparagraph 2.4.2 or an evaluation prepared by the Architect indicates that the Project exceeds the MACC, the provisions outlined in this paragraph shall apply.

ARTICLE 6

REIMBURSABLE EXPENSES

- 6.1 Reimbursable expenses are those above and beyond Basic Services compensation and are the actual expenditures made by the Architect or his employees in the interest of the Project. **No expenses for which the Architect is entitled reimbursement shall be incurred by the Architect until written approval is given by the Owner, unless specifically allowed under Article 14.2 of this Agreement.** Reimbursable expenses shall be limited to the following:
- 6.1.1 Expenses of transportation when traveling in connection with the Project when specifically set out in Article 14. Such expenses are limited to per diem and mileage rates as set forth in the Per Diem and Mileage Act, Section 10-8-1 to 10-8-8, NMSA 1978, and DFA Rule 95-1 as amended, except that such travel shall be authorized in advance by the Owner.
- 6.1.2 Expense of fees paid for securing approvals of authorities having jurisdiction over the Project.
- 6.1.3 The Architect shall charge Bidders a deposit fee equal to the full cost of reproduction of drawings, specifications, and other documents required by the Owner to solicit bids and execute the Construction Contract. This fee shall be completely refunded if the documents are returned in usable condition within the time limits specified in the Invitation to Bid. All forfeited fees shall be returned to the Owner.
- 6.2 Construction documents and specifications will be printed under the terms of a contract between the State Purchasing Division and the current Vendor on contract. **All reproduction required must be approved in writing by the Property Control Division prior to request.** This expense shall be paid by the Owner for the initial Bidding and by the Architect for subsequent Biddings (see Subparagraph 5.2.4). All other reproductions as may be required for the Owner's review or for the office use of the Architect and the Architect's consultants shall be provided as part of the Architect's Basic Compensation.
- 6.3 **APPLICABLE GROSS RECEIPTS TAXES ON REIMBURSABLE EXPENSES RECEIVED BY THE ENGINEER UNDER THE PROVISIONS OF THIS CONTRACT.** The Architect shall use and require the use of tax exempt certificates by Consultants and Suppliers whenever allowed by law. In any event, the Architect shall not include taxes paid as a part of the base dollar amount upon which taxes are calculated. Payment pursuant to this provision does include payment for gross receipts taxes pursuant to Subparagraph 13.1.1.

ARTICLE 7

PAYMENTS TO THE ARCHITECT

- 7.1 **PAYMENTS ON ACCOUNT OF BASIC SERVICES**

- 7.1.1 Payments for Basic Services shall be made monthly and shall be in proportion to services performed within each phase of services, on the basis set forth in Article 13.
- 7.1.2 When portions of the Project are deleted or otherwise not constructed, compensation for such portions of the Project shall be payable to the extent services are performed on such portions, in accordance with the schedule set forth in Subparagraph 13.1.2, based on
 - A. The lowest bona fide bid or negotiated proposal, or
 - B. If no such bid or proposal is received, the most recent Statement of Probable Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

7.2 PAYMENT FOR SERVICES AND COSTS

- 7.2.1 The Architect shall submit monthly, as necessary, a fully completed request for payment for all services and costs on the form provided as Exhibit F to this Agreement.
- 7.2.1.2 Owner reserves the right to require the Architect to submit electronic pay requests.
- 7.2.2 The Architect shall submit, with his billings at the completion of the Project, certification that payment has been made to all consultants, suppliers, and others for materials and services required by this Agreement.

7.3 PAYMENTS WITHHELD

- 7.3.1 No deductions or withholdings shall be made from the Architect's compensation on account of penalty, liquidated damages, or other sums withheld from payments to Contractors, or on account of the cost of changes in the Work other than those for which the Architect may be legally liable and as required in Paragraph 2.9.

7.4 PROJECT SUSPENSION OR TERMINATION – OTHER PARTIES

- 7.4.1 In the event of termination or suspension of the Project due to the fault of parties other than the Architect, the Architect shall be compensated for services performed to termination date pursuant to Article 10.

ARTICLE 8

ARCHITECT'S RECORDS AND AUDIT

- 8.1 Records of expenses by the Architect and his consultants pertaining to all services under this Agreement shall be kept on the basis of generally accepted accounting principles and shall be available at mutually convenient times to the Owner or the Owner's authorized representative. The

Owner shall have the right to audit all such records and billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Owner to recover excessive or illegal payments.

- 8.2 Records of expenses shall be kept by the Architect and his consultants and shall be available to the Owner until all applicable Statutes of Limitations have run, and this provision shall survive and continue beyond the termination of other terms of this Agreement.
- 8.3 These records shall be subject to inspection by the Owner, the Department of Finance and Administration and the State Auditor and shall be maintained for inspection for a period of three years. Billings may be audited both before and after payment; and payment by the Owner under this Agreement shall not foreclose the right of the state to recover excessive of illegal payments.

ARTICLE 9

OWNERSHIP AND USE OF DOCUMENTS

- 9.1 Original construction document drawings, designs, specifications, notes, project manuals, and/or related documents and other work developed in the performance of this Agreement by the Architect shall become the sole property of the Owner whether the Project for which they are made is constructed or not, pursuant to Section 13-1-123, NMSA 1978. These documents shall be kept on file by the Owner. The Architect may maintain a complete reproducible set of any and all record documents developed under this Agreement.
- 9.2 All documents, including drawings and specifications prepared by the Architect pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by the Owner on any other project.
- 9.3 The original drawings may be marked by the Owner or the Architect to designate the restrictions of use of these documents as set forth in Paragraph 9.2.
- 9.4 **Copyright:** No reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Architect.

ARTICLE 10

TERMINATION OF AGREEMENT

- 10.1 If either party should fail to fulfill in a timely and appropriate manner his obligations under this Agreement, or if either party should violate any of the covenants, agreements, or stipulations of this Agreement, the non-breaching party, in addition to remedies available under the terms of this Agreement, shall thereupon have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date thereof at least five days before the effective date of such termination. The Architect shall be responsible for all consequential costs

which may arise out of failure to complete the services in accordance with the schedule attached as Exhibit A.

- 10.2 In the event that the Project is abandoned by the Owner, the Owner may terminate this Agreement at any time by giving at least seven days' notice in writing to the Architect.
- 10.3 In the event of termination, all finished or unfinished documents, data, sketches, calculations, estimates, records, schedules, studies, surveys, drawings, maps, models, photographs, reports, and such other information and data accumulated in the performance of services under this Agreement, whether complete or in progress, prepared by the Architect under this Agreement shall become the Owner's property, and the Architect shall be entitled to receive compensation for actual work satisfactorily completed hereunder, including reimbursable expenses authorized by the Owner which are then due.
- 10.4 Termination: This Agreement may be terminated by either of the parties hereto without cause upon written notice delivered to the other party at least 10 days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

ARTICLE 11

GENERAL AND SPECIAL PROVISIONS

- 11.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico as the same from time to time exist.
- 11.2 Unless expressly provided otherwise, terms in this Agreement shall have the same meaning as those in the Conditions of the Contract for Construction, as provided in Exhibit G of this Agreement.
- 11.3 As between the parties to this Agreement: As to all acts or failures to act by either party to this Agreement, any applicable failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the relevant Date of Substantial Completion of the Work, and as to any acts or failures to act occurring after the relevant Date of Substantial Completion, not later than the date of the Owner's approval of the Final Certificate of Payment.
- 11.4 The Owner and the Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages covered and paid by any property insurance during construction as set forth in the Conditions of the Contract for Construction, as provided as a part of Exhibit G of this Agreement. The Owner and the Architect each shall require appropriate similar waivers from their contractors, consultants, and agents.
- 11.5 The Architect shall hold harmless and indemnify the Owner against any and all injury, loss, or damage, including cost of defense - including but not limited to court costs and attorney's fees - arising out of the negligent acts, errors, or omissions of the Architect.

- 11.6 This agreement shall not become effective until:
- A. Approved by the State Contracts Officer, Department of Finance and Administration, for compliance with the financial requirements of the legislation or funding source authorizing the Project and compliance with the requirements of all other legislation pertaining to the expenditures of public funds (if over \$250, or if the original amount combined with this or any other amendment is \$250 or more); and
 - B. Signed by all parties required to sign this Agreement.
- 11.7 The Architect and his agents and employees are independent contractors performing professional and technical services for the Owner and are not employees of the State of New Mexico. The Architect and his agents and employees shall not as a result of this Agreement accrue leave, retirement, insurance, bonding, use of State vehicles, or any other benefits afforded to employees of the State of New Mexico.
- 11.8 The Architect's design shall be in compliance with all Federal, State, and local codes and laws related to the Work, including but not limited to provisions of the Civil Rights Act of 1964 and Executive Order 11246, Title VI, Sections 3 and 109; the minimum handicapped accessibility as required by Section 60-13-44D, NMSA 1978; Section 306, New Mexico Uniform Building Code, which adopts ANSI A117.1, 1980; and parking requirements as required by Section 15-3-19, NMSA 1978. In all cases, the more restrictive code or statute adopted by the Construction Industries Division of the Regulation and Licensing Department shall govern.
- 11.9 The Architect shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written consent of the Owner.
- 11.10 Whenever the Architect contracts for an additional Project Representative to be on the Project or enters into a joint venture to share the duties and responsibilities of the Architect under this Agreement, all such agreements require prior Owner approval and must outline the duties and responsibilities of the Architect and his representative, or joint venturer, or consultant; and a copy of such approved agreement shall be filed with the Owner. Such agreements shall be amendments to this Agreement.
- 11.11 The Architect, upon final payment of the amounts due under this Agreement, releases the Owner, his officers and employees, and the State of New Mexico from his liabilities and obligations arising from or under this Agreement, including, but not limited to, all damages, losses, costs, liability, and expenses, including but not limited to attorney's fees and costs of litigation that the Architect may incur.
- 11.12 The Architect agrees not to purport to bind the State of New Mexico to any obligation not assumed herein by the State of New Mexico, unless the Architect has express written authority to do so, and then only within the strict limits of that authority.

- 11.13 The Architect warrants that he currently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Architect further covenants that, in the performance of this Agreement, no person having any such interest shall be employed by the Architect. The Architect also agrees that neither he nor anyone employed by him shall have an interest, direct or indirect, in any company hired for the Project as Contractor, subcontractor, or supplier, except when the Project is a design-build project and/or the Owner provides inspections independent of the Architect.
- 11.14 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-24-1, 30-24-2, and 30-41-1 through 3, NMSA 1978), which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 199, NMSA 1978) imposes civil and criminal penalties for its violation.
- 11.15 The Architect shall obtain professional liability insurance and provide a certificate of coverage on the form designated herein as Exhibit B. Such insurance coverage shall be maintained in full force and effect at all times during the performance of Project services and for a period thereafter of not less than three years following Substantial Completion of the Work. Fees for such insurance shall be at the Architect's expense and of the following limits of liability:
- 11.15.1 Professional liability insurance, per occurrence and in the aggregate, of \$250,000, unless as otherwise provided in Article 14. Proof of compliance with this section shall be provided by the Architect to the Owner in each year insurance is required.
- 11.16 A potential contractor or Contractor agrees to comply with state laws and rules pertaining to workers' compensation insurance coverage for its employees. If contractor fails to comply with the Worker's Compensation Act and application rules when required to do so, the contract may be cancelled effective immediately.
- 11.17 No work requiring the approval of the Owner shall be undertaken until the Owner's written approval has been requested and obtained. Any deviation from this requirement shall be considered a material breach of this Agreement and grounds for termination.
- 11.18 In the event that the Architect subcontracts out any portion of his duties or responsibilities under this Agreement, or if the Architect hires consultants to assist him with his duties or responsibilities under this Agreement, the Architect shall require that all terms of this Agreement applicable to the consultant, subcontractor, or joint venturer shall be incorporated into any contract or agreement entered into with such consultant, subcontractor, or joint venturer.
- 11.19 **Notices.** All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid - in the instance of notice of termination of work also by certified mail - and addressed as follows:

OWNER:

ARCHITECT:

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as herein above provided.

- 11.20 **Gender, Singular/Plural.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context requires otherwise.
- 11.21 **Captions and Section Headings.** The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.
- 11.22 **Labor-Management Relations.** During the entire term of this Agreement, the Architect shall take good-faith steps necessary to further satisfactory labor-management relations to the end that the operations of the Architect and of the Owner shall not be affected by strikes, picketing, boycotts, or other labor activities.
- 11.23 This document may be executed in counterparts, each of which shall be deemed an original.
- 11.24 **Certificates and Documents Incorporated.** All certificates and documentation required by the provisions of this Agreement shall be attached to this Agreement at the time of execution and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.
- 11.25 **Separability.** If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.
- 11.26 **Waiver.** No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.
- 11.27 **Mergers, Dissolution, Successors, and Assigns.** The Architect agrees that during the term hereof it will maintain its existing business structure, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another business structure or permit one or more other business structures to consolidate or merge into it, unless the surviving, resulting, or transferred business structure, as the case may be,

- A. Assumes, is capable of, and agrees in writing to perform all of the obligations of the Architect hereunder;
- B. Qualifies to do business in the State of New Mexico, including providing a legal resident registered Architect of New Mexico as Project Architect; and
- C. The Owner approves the firm or individual Architect, or new Architect, if any, who is to proceed.

The terms and provisions hereof shall extend to, be binding upon, and inure to the benefit of the successors and assigns of the respective parties hereto.

11.28 The Owner shall have sole discretion to determine whether or not the Project Architect or the firm named as Architect in this Agreement shall continue to have all contract rights under this Agreement and continue to represent the Owner under this Agreement in all instances where the Project Architect ceases to be associated with the firm named in this Agreement.

11.29 **Entire Agreement.** This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

11.30 **Interchangeable Terms.** For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

11.31 **Words and Phrases.** Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.

11.32 **Relationship of Contract Documents.** The Contract Documents are complementary, and any requirement of one contract document shall be as binding as if required by all.

11.33 **Exhibits and Attachments Incorporated by Reference.** All exhibits, attachments, riders, and addenda referred to in this Agreement, including but not limited to the exhibits referred to in this Agreement, as well as those listed in Paragraph 11.33 below, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

11.34 The following exhibits are attached to and made a part of this Agreement:

- Exhibit A - Time Schedule for Project Phases
- Exhibit B - Architect's Errors and Omissions Insurance Certificate
- Exhibit C - List of Consultants and Consultants' Agreements Exhibit
- Exhibit D - Green Building Standards
- Exhibit E - Architect Additional Services Proposal/Amendment Form Exhibit
- Exhibit F - Architect Pay Request Form
- Exhibit G - Boilerplate Bidding Documents and Conditions of the Contract for Construction

11.35 Equal Opportunity Compliance: The Architect agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, or, if the employer has fifty or more employees, spousal affiliation, or, if the employer has fifteen or more employees, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

ARTICLE 12

MAINTENANCE

- 12.1 Ease of maintenance and the ability to repair major items of installed equipment by replacement are essential to the Project. To ensure that these services can be adequately performed after the Project is accepted by the Owner, the Architect shall:
 - 12.1.1 In all relevant Contract Documents, design and provide for all major installed equipment in the Project, including but not limited to removal, access, maintenance, and storage space needs. In addition, all installed equipment systems shall be appropriately identified and labeled to describe the capacities, flows, and other pertinent information related to their maintenance and safe operation;
 - 12.1.2 Specify only equipment that can be readily maintained by the owner other qualified commercial repairmen who are proximate to the location of the Project;
 - 12.1.3 Provide Construction Documents that accurately depict the installation of all major items of installed equipment and which provide reasonable detail on all other major systems to be installed; and
 - 12.1.4 At the completion of the Schematic, Design Development, and Contract Documents Phases, brief the Owner on the rationale for the selection of the major mechanical and electrical systems to be specified in the Contract Documents, together with their probable life-cycle costs.

ARTICLE 13

BASIS OF COMPENSATION

13.0 BASIC COMPENSATION

13.1.1 FOR BASIC SERVICES, as described in Paragraphs 2.0 through 2.6, and any other services included in Article 14 as part of Basic Services, compensation shall be computed as follows:

On the Basis of a Fixed Fee of	% on an estimated MAAC of \$	\$
Additional Services		\$
Consultant Services		\$
Plus all applicable gross receipts taxes @	%	
Total Basic Compensation		\$
Total Reimbursable		
Total Contract Sum (Phase, if applicable)		\$

12.1.2 Payments for Basic Services shall be made monthly in proportion to services performed so that the compensation at the completion of each phase, except when the compensation is on the basis of a Multiple of Direct Personnel Expense, shall equal the following percentages of the total Basic Compensation:

Additional Services	\$
Consultant Services	\$
Programming [10]%	\$
Schematic Phase [15]%	\$
Design Phase [20] %	
Construction Documents [25] %	
Bidding or Negotiation [3] %	
Construction Administration [22] %	
Acceptance of project, Release of Liens, and Approval by the Owner of As Built Drawings Required by Article [3] %	
Inspection and Report Eleven Months after Substantial Completion [2] %	
TOTAL Basic Compensation (100%)	\$
Total Reimbursable	\$ _____
Total Contract Sum (Phase, if applicable)	\$ _____

13.2 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as described in Paragraph 2.8, compensation shall be computed separately in accordance with Subparagraph 2.8.2.

13.3 COMPENSATION FOR ADDITIONAL SERVICES

13.3.1 FOR ADDITIONAL SERVICES OF THE ARCHITECT, as described in Paragraph 2.8, and any other services included in Article 14 as part of Additional Services, but excluding additional services of consultants, compensation shall be a negotiated lump sum.

13.3.2 FOR ADDITIONAL SERVICES OF CONSULTANTS, including but not limited to the additional structural, mechanical, and electrical architectural services, a multiple of 1.10 times the amounts billed to the Architect for such services. The Architect shall provide the Owner with hourly rates for his consultants and their employees detailed by professional levels.

13.4 FOR REIMBURSABLE EXPENSES, if allowed, as described in this Agreement at cost.

13.5 Maximum amount to be paid for the duration of this Contract shall not exceed the “Total Contract Sum” indicated for Phase I, including, but not limited to, total compensation, reimbursables and gross receipts taxes, as per Section 13 of this Contract. The contract sum for Phase II will be authorized by an Amendment to this Agreement.

ARTICLE 14

OTHER CONDITIONS OR SERVICES

14.1 FOR NEW MEXICO EMPLOYEES HEALTH COVERAGE

- A. If Architect has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Architect certifies, by signing this agreement to:
1. have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Architect and the State exceed one million dollars or;
 2. have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Architect and the State exceed \$500,000 dollars or;
 3. have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Architect and the State exceed \$250,000 dollars.
- B. Architect agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the State.

- C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenewmexico.state.nm.us/>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Architect agrees these requirements shall apply the first day of the second month after the offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time

14.2 REIMBURSABLE COST – The total reimbursable cost shall be \$ for project bid set reproductions, surveying, testing, or excessive travel requirements beyond those included in basic services, which shall be determined herein prior to execution of this contract or any other project related expenses per Article 6. **The Architect shall incur no cost until a written proposal of work for each part is submitted and approved by the Property Control Division.**

14.3 ELECTRONIC PROJECT SCHEDULING: The Project Architect shall provide and update a detailed project schedule in the current version of Microsoft Project software, to the Project Manager on a minimum of a bi-monthly basis.

END OF ARTICLE 14

APPENDIX C: ACKNOWLEDGEMENT OF RECEIPT FORM

**New Mexico Department of Transportation
RFP No. 19-24
Mesa Rest Area – Architectural/Engineering Services**

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and ending with “Appendix E”.

The acknowledgement of receipt should be signed and returned to the Procurement and Facilities Management Division, NMDOT, by the close of business on **August 27, 2018**. Only potential Offerors who elect to return this completed form will receive copies of RFP amendments, if any are issued. The following information will be used for all correspondence related to this Request for Proposals.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

Please return completed form to the name and address listed below.

Rocio Dominguez
Procurement and Facilities Management Division
New Mexico Department of Transportation
1120 Cerrillos Rd., Rm #103
Santa Fe, NM 87504
Ph. (505) 827-5338
Fx. (505) 827-5555
Email: Rocio.Dominguez@state.nm.us

APPENDIX D: CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

—OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)

APPENDIX E: NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM

1. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
2. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.
3. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs.
4. For Indefinite Quantity, Indefinite Delivery contracts (state price agreements without specific limitation on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the Contractor reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

Signature of Offeror: _____ Date _____